CHAPTER 2

(Stereo)typical Law: Challenging the Transformative Potential of Human Rights

Olga Frańczak

2.1 Introduction

In 2010, the United Nations Commission on the Status of Women stated that stereotypes are a "significant challenge to the practical realisation of women's human rights" and addressing them "must be a key element in all efforts to achieve the realisation of women's human rights" (CSW, 2010, paras. 10–11; Cusack, 2013b, p. 125). This argument is also reflected by the feminist legal scholars, who also indicate that there is a clear link between stereotypes and gender inequality (Fredman, 1997; Cook & Cusack, 2010; Timmer, 2011; Peroni & Timmer, 2016). Leading human rights organisations recognise gender stereotypes as a human rights concern and have introduced legal and policy instruments aimed at their elimination.[1] Yet, stereotypes continue to affect and limit people's lives (Fredman, 1997, p. 3). This paradox raises the question of whether law is an appropriate tool to tackle gender stereotyping.

O. Frańczak (✉)
University of Surrey, Guildford, UK

G. Guney et al. (eds.), *Towards Gender Equality in Law*,
https://doi.org/10.1007/978-3-030-98072-6_2

However, gender stereotyping has not sparked a wide debate within legal scholarship. This visible gap makes it difficult to address the clash between numerous legal commitments and the continuous harmful impact of gender stereotyping. This chapter aims to fill this gap and challenge the status quo by taking a critical look at the transformative potential of international human rights instruments. It challenges the idea that human rights are a "panacea" and argues that they will not automatically transform societies and eliminate the deeply rooted attitudes which make discrimination not only possible but also encouraged. The considerations included in this chapter provide a fresh perspective on the anti-stereotyping laws and policies, and contribute to the scholarly debates on anti-discrimination laws, human rights, gender equality, gender stereotyping and feminist legal theory.

Drawing on feminist legal theory, this chapter addresses the following question: Can and should law be used to challenge gender stereotyping? To answer this question, the chapter identifies two "failures" of legal instruments. Firstly, that law "fails" to embody its expected ideals. While law is considered to be "objective", it is not free of bias and prejudice (Fredman, 1997). Legal instruments are drafted by the people in power, and, therefore, they are deeply influenced by the existing patriarchal hierarchies (Fredman, 1997). Feminist legal scholars highlight that the "objectivity" of legal norms in fact represents male interests (Hunter, 2013; Smart, 1989). Legal definitions and procedures simplify diverse human experiences and behaviours to fit the pre-established legal frames (Smart, 1989, p. 34). Therefore, it is important to consider if such a multifaceted and deeply rooted issue like gender stereotyping can be addressed by legal norms (Smart, 1989, pp. 164–165).

Secondly, this chapter analyses how law "fails" to be transformative and reproduces existing patriarchal power structures. Human rights are no exception. Their focus upon "protection" reinforces hegemonic structures and stereotypes, for instance women's position as victims (Otto, 2005; Peroni & Timmer, 2016). Therefore, legal norms can target gender stereotypes but can also reinforce them (Ben-Asher, 2016, p. 1190). It is impossible to foresee the implications of even the most carefully drafted law reform (Smart, 1989). Introducing a new law is not enough to eliminate deeply rooted gender stereotypes (Auchmuty, 2012; Hester & Lilley, 2014). However, this does not mean that law has no role to play in the elimination of harmful stereotypes. It has the power to publicly

acknowledge gender stereotyping as a problem, which is necessary for its effective elimination (Cook & Cusack, 2010).

This chapter begins with the meaning of gender stereotyping and recognition that major human rights instruments refrain from defining it. The following section highlights that gender stereotyping is recognised by human rights institutions, as well as feminist legal scholarship, as an obstacle for the full realisation of human rights. Whilst feminist legal scholars notice that law has a role to play in elimination of gender stereotyping, they remain critical towards law. This leads to the analysis of how law "fails" to live up to its presumed characteristics of universality and objectivity and the exploration of how law "fails" to be transformative and might actually reproduce patriarchal power structures. The chapter concludes with a brief discussion outlining that while law is not enough to bring about substantive change, it is crucial to publicly identify gender stereotyping as a problem that needs addressing.

2.2 Defining Gender Stereotyping

When discussing gender stereotypes, it is crucial to agree on the meaning of both "gender" and "stereotypes". The international human rights system is reluctant to provide legally binding definitions of gender stereotyping. Even though the Istanbul Convention (adopted by the Council of Europe), the Maputo Protocol (the African Union) and the Convention of Belém do Pará (the Organisation of American States) oblige states parties to address gender stereotyping, they do not define it. Importantly, such definition is also absent from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which also includes such obligation. This does not mean that the organisations refrain from defining these terms at all. For instance, the Council of Europe Gender Equality Strategy 2018–2023 (p. 16) contains a definition of gender stereotyping. However, its absence within major legally binding instruments, like the ones listed above, is a missed opportunity to unify and standardise the understanding of gender stereotyping.

It should be noted here that defining a term in law has its drawbacks. With a concept as multifaceted as gender stereotyping, a strict definition could drastically narrow down the scope of anti-stereotyping legislation (or research), thus limiting the transformative potential of such instruments. However, failing to define the term poses similar challenges, since in such a case a term can be (mis)interpreted with no limitations.

Opponents of anti-stereotyping legislations could freely define stereotyping in a way that would distort the meaning of the term. Therefore, this chapter employs a broad definition of stereotyping to encapsulate its versatile character while still providing a point of reference and focus for the analysis.

This chapter follows the definition of gender included in the Istanbul Convention which reads that gender is "socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Art 3 (c)). It recognises that gender is more than a set of biological characteristics which makes it particularly useful for a study on stereotypes. Moreover, it is a legally binding definition drafted by the leading human rights organisation in Europe, providing it with a high degree of recognition within the European context.

The definition of stereotyping employed in this chapter draws on the work of Rebecca Cook and Simone Cusack (2010). Their research on gender stereotyping in the legal context forms a significant part of the academic debate (e.g. Cusack, 2013a, 2013b, 2016; Cook & Weiss, 2016; Cook et al., 2010), and has influenced many scholars in the field (e.g. Timmer, 2011, 2015; Fredman, 2016; Hester & Lilley, 2014; Šimonović, 2014). Cook and Cusack (2010, p. 9) define stereotype as "a generalised view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group". Therefore, a stereotype assumes that all members of a group have a particular characteristic without reflecting on individual personalities, wishes and abilities. Importantly, this definition does not exclude stereotypes assigning "positive" traits, nor stereotypes that might be "true" in a specific case. For instance, just because a specific man is physically strong, or a woman loves to cook, it does not make it any less of a stereotype (Cook & Cusack, 2010, pp. 9, 11).

Thanks to these two definitions, in short, gender stereotypes are understood in this chapter as generalised views based on socially constructed ideas of femininity and masculinity. This wording reflects that gender stereotypes affect people of all genders and avoids reinforcing gender binary (Agius, 2015). Employing such approach provides an inclusive scope for the discussion on the relationship between gender stereotyping and human rights, which is the aim of this chapter.

Importantly, this chapter challenges the idea that gender stereotyping is solely a "women's issue". Patriarchal stereotypes, as well as toxic conceptualisations of masculinity, harm men and limit their ability to lead full

lives and develop their personal potential (Connell, 1993; Council of Europe Gender Equality Strategy 2018–2023). At the same time, they reinforce men's dominant position in the society. Moreover, as pointed out by Cook and Cusack (2010), gender stereotypes of one gender can impact another as well. For instance, if stereotypically women's place is at home, in the private sphere, then public and professional life is designated to men (Council of Europe Gender Equality Strategy 2018–2023). Similarly, if mothers are considered better parents, then that paints a picture of fathers as inadequate and incapable. Both these sides create social expectations and pressure to conform. Gendered divisions of labour, particularly relating to the social function of care, do not happen in a vacuum (Caracciolo di Torella & Masselot, 2020). They support a very specific (patriarchal) socio-economic model with unpaid labour performed mostly by women and paid labour—by men. Therefore, deeply rooted gender stereotypes are the normative underpinnings that support these particular structures (Caracciolo di Torella & Masselot, 2020; Smart, 1989).

2.3 Why Bother?

This section explores the position of gender stereotyping within a human rights framework and feminist legal scholarship. It discusses human rights commitments to tackle gender stereotyping and positions gender stereotyping as a challenge for the realisation of human rights. This also highlights the urgency of raising awareness on gender stereotyping and the importance of conducting this research. In doing so, this section sets the context for identifying the key legal "failures" with regards to the elimination of gender stereotyping.

Gender stereotypes create a social climate of "intimidation, fear, discrimination, exclusion and insecurity which limits opportunities and freedom" where inequality and violence thrive (Recommendation CM/Rec(2019)1, p. 1). As highlighted by the Council of Europe in the Recommendation of Preventing and Combatting Sexism, acts of "everyday" sexism can incite "overtly offensive and threatening acts, including sexual abuse or violence, rape or potentially lethal action" (Recommendation CM/Rec(2019)1, p. 4). The "Everyday Sexism Project", which catalogues instances of sexism experienced on a day-to-day basis, is a sobering illustration of that (Bates, 2012). Consequently, gender stereotypes are a part of the "continuum of violence" (Recommendation CM/Rec(2019)1, p. 1). As such, they are not "harmless" or "benign", but a human rights

concern recognised in several instruments drafted by major international organisations.

The most prominent example of such documents is CEDAW adopted by the United Nations (UN) in 1979. CEDAW draws a clear connection between gender stereotyping and discrimination against women and obliges states parties to address it (Arts 2(f), 5(a) and 10(c)). Currently 189 states are parties to CEDAW suggesting that there is a global agreement that gender stereotypes are a challenge for human rights. This is further reinforced by the fact that CEDAW is not the only legal instrument introduced by the UN aimed at the elimination of gender stereotypes. The Convention on the Rights of Persons with Disabilities (CRPD) is another excellent example. It recognises that stereotypes relating to persons with disabilities can also be based on "sex and age" and obliges states to combat them (Art 8). Therefore, CRPD acknowledges that different grounds of stereotyping can intersect with each other. Moreover, the general recommendations adopted by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) also encourage states to address gender stereotypes in an array of different areas, like public and political life (General recommendation No. 23), conflict and post-conflict situations (General recommendation No.30), the justice system (General recommendation No. 33) and many others.[2]

Importantly, also other international human rights organisations have introduced legal and policy mechanisms aimed at the elimination of gender stereotyping. The Organisation of American States, the African Union, the Council of Europe, as well as the European Union have introduced an array of such instruments as well.[3] Similar commitments are also visible in Asia.[4] There are two main conclusions from these observations. Firstly, a recognition that gender stereotypes are a problem and should be eradicated. Secondly, the international community considers legal and policy instruments to be a valid tool for the eradication of gender stereotyping.

Feminist legal scholarship reaffirms the link between gender stereotyping and human rights violations, considering stereotyping to be one of the biggest challenges to the realisation of human rights in contemporary society (e.g. Fredman, 1997; Cook & Cusack, 2010; Timmer, 2011). Rebecca J. Cook and Simone Cusack (2010, pp. 2–3) highlight that in order to eliminate violations of the human rights of women, greater attention must be dedicated to eliminating harmful gender stereotyping. Rikki Holtmaat and Jonneke Naber (2011) argue that examining gender stereotyping is essential to grasp links between human rights violations and

culture. In the words of Alexandra Timmer (2011, p. 737), "stereotypes are both cause and manifestation of the structural inequality that non-dominant groups suffer from". They hinder human dignity because they limit individuals' ability to exercise their own agency (Cook & Cusack, 2010; also, Council of Europe Gender Equality Strategy 2018–2023). Moreover, feminist scholarship recognises that gender stereotyping contributes to justifying violence against women (Peroni & Timmer, 2016; Clay-Warner & Edgemon, 2020).

Law is "an important and necessary means of dismantling" gender stereotypes (de Silva de Alwis, 2011, p. 314; Timmer, 2011). Cook and Cusack (2010, pp. 39–41) argue that without legal measures, gender stereotypes are legitimised and given authority through the law. Therefore, lawmakers should not omit or ignore the impact of gender stereotyping when designing human rights instruments. At the same time, feminist scholars remain critical of the law as a tool of substantive change and recognise that law is not a "panacea" for gender stereotypes (Smart, 1989; Fredman, 1997; Cook & Cusack, 2010). The next section reflects on these arguments and challenges the presumed "objectivity" of legal norms.

2.4 Failure to Be Objective

This section explores if the law (including international human rights) fails to live up to its "expected" characteristics, such as universality and objectivity. Following feminist legal scholarship, it represents a critical approach towards using legal norms as a tool for gender equality and rejects the liberal rhetoric of law as neutral. In fact, this section draws attention to the many ways law fails to be objective and reflects the views and goals of the people who draft it. As Carol Smart (1989) argues, while the power of law must not be disregarded, feminists should be careful when relying on law to bring forward social transformation.

To open up these considerations, it should be pointed out that even though law is not value-free, it enjoys a special position within the society (Smart, 1989; Fredman, 1997). Smart (1989, p. 10) warns that law "sets itself above other knowledges like psychology, sociology, or common sense" and claims to reflect the "truth". At the same time, the author highlights that legal language, procedures and methods are "fundamentally anti-feminist or (…) bear no relationship to the concerns of women's lives" (Smart, 1989, p. 160). There is an analogy between law and "what might be called a 'masculine culture'" (Smart, 1989, p. 2). Therefore,

Smart (1989, p. 2) cautions that "in taking on law, feminism is taking on a great deal more as well".

In a similar vein, Roberta Guerrina and Marysia Zalewski (2007, p. 7) point out that "the concept of rights might be so irredeemably tainted by its association with the Western liberal tradition that it cannot be useful to women". Hence, human rights can actually be perceived as a Western creation, with Western understanding of gender, equality, justice, culture as well as stereotypes. Therefore, feminist scholars argue that law fails to be neutral and highlight the influence of the dominant interests on its contents.

This challenges the idea of law as being above particular interests and expressing "universally" (in the national/regional context) accepted values. Sandra Fredman (1997, p. 2) notices that since law is made by the people in power, it is not "a disembodied force". Feminist scholars highlight that law is a product of the already-existing social, political and economic structures. As such, law reflects and perpetuates the patriarchal social order. Because men have constituted (and still do) a majority of lawmakers, but more importantly, because they have "dominated over women", the interests represented in the legal systems are generally male (Fredman, 1997, pp. 1–3). In fact, feminists argue that the "objectivity" of law highlighted by legal liberalism reflects "the male perspective" (Hunter, 2013; Smart, 1989). Even human rights instruments marginalise women's voices by considering the male position to be "universal" (Otto, 2005, p. 105). If law mirrors the current patriarchal order, can it be effectively used to eradicate deeply rooted gender stereotypes?

As Eva Brems and Alexandra Timmer (2016) highlight, in essence legal norms are based on generalisations. The authors point out that the legal driving age is based on an assumption that children are reckless (also: Timmer, 2011, p. 718). In this example, law does not take into account that a particular 15-year-old might be mature enough to drive or that a specific adult might be too reckless to be a responsible driver. In the same way, legal norms can reflect harmful gender stereotypes. For instance, the Irish Constitution states that through "her life within the home", woman gives the state support necessary for achieving the "common good" (Art 41 (2)). Therefore, being grounded in the stereotype that woman's main role is being a homemaker (Cook & Cusack, 2010, pp. 22–23).

Law limits and simplifies people's experiences to fit into fixed legal frames (Smart, 1989, p. 34). Perhaps it is not sufficient to provide effective solutions for such a deeply rooted and multifaceted issue like gender

stereotyping (Smart, 1989, pp. 164–165). Legal reasoning aims at fitting complex and diverse human behaviours into pre-established legal definitions, procedures and nomenclature. A valid example is when human rights instruments refer to "women" without reflecting on the heterogeneity of women's lives, experiences and knowledges. For instance, CEDAW does not refer to the fact that other grounds of discrimination, like disability, sexual orientation, religion or age, intersect in important ways with gender. The reflection on diversity of women's experiences is limited to three cases (Fredman, 2016, p. 35). The Convention refers, firstly, to women in "situation of poverty" (preamble), and secondly, to rural women (Art 14). Thirdly, the preamble highlights that elimination of all forms of racism is "essential to the full enjoyment of the rights of men and women". While CEDAW recognises that women are not a homogenous group, the approach is rather fragmentary. However, the UN has taken steps to address this gap for instance in CRPD or through adoption of general recommendations by the CEDAW Committee.

Feminist legal theory reveals that the "universal" women's experience visible in legal norms is in fact an expression of gender essentialism. It assumes that there exists a "standard" women's experience, irrespective of race, age, religion, disability or other characteristics (Choudhry, 2016, p. 411). The law considers women to be a homogenous group, disregarding individual needs and abilities (Hirschmann, 2013, p. 54). The experiences of the dominant group of women (abled, middle aged, straight, white, cisgender) become a "default". This shows that when legal norms refer to "women", they refer to a very specific group, leaving out non-dominant and intersectional experiences (Crenshaw, 1989; Fredman, 2016).

The generalising nature of legal norms can pose serious challenges for drafting anti-stereotyping laws or equality laws in general. If such instruments do not recognise the diversity of women's experiences, it can severely limit their applicability and effectiveness (Crenshaw, 1989). Without acknowledging that gender intersects with other grounds of discrimination, anti-stereotyping laws would in fact reproduce stereotypes by representing the dominant experiences as the only valid experiences.

At the same time, this raises the question of whether aiming to include many different grounds of inequality would not compartmentalise anti-stereotyping laws, making them ineffective, especially considering that all these categories can intersect in infinite number of personal contexts and could not possibly be listed within a legal document. An intersectional approach developed by Kimberlé Crenshaw (1989) offers answers to these

doubts. An intersectional interpretation of gender identifies that gender intersects with other social characteristics and identities without the need to list all of them. Instead, the focus is placed on targeting the power structures rendering some people vulnerable, not on who those people are (Fredman, 2016, p. 31; Cho et al., 2013; Crenshaw, 1989). As Fredman (2016, p. 34) highlights, women experience gender stereotyping in different ways without changing the fact that they are based on gender.

The last point in this section continues the above discussion on the "generalising" character of legal norms and focuses it specifically on international human rights. It remains highly problematic as to whether they are the best means to lead the way towards the elimination of gender stereotyping. Clearly, international institutions, like the United Nations, the Council of Europe, the African Union or the Organisation of American States bring countries together allowing them to work towards shared goals. They provide a platform to identify common problems and make commitments beyond the borders of just one country. However, international human rights instruments are drafted by complex institutions detached from the everyday realities of people's lives (Zwingel, 2016, p. 223).

Since these norms must be applicable to a variety of vastly different contexts, they must ensure a sufficient level of flexibility. For instance, Art 14 of the Istanbul Convention obliges states parties to "include teaching material" on "non-stereotyped gender roles". While the article states that it must be a part of "formal curricula" and be included "at all levels of education", the wording is purposefully left without further details to allow maximum flexibility in the implementation of the article and to recognise "different possibilities between Parties in determining teaching materials" (CoE, 2011, p. 18). Therefore, since international norms must be applicable in different contexts, they remain quite general. However, the more specific the laws, the better protection they can offer (McGee Crotty, 1996, p. 322).

Moreover, international norms are usually the lowest "common denominator" that could have been agreed on by a variety of states with different traditions and agendas. CEDAW is an appropriate example. Due to its global reach, the implementation of the Convention faces significant challenges. CEDAW's effectiveness is hindered by numerous reservations, cultural differences and states interpreting its provisions to suit their own political, social and economic goals (Kimelblatt, 2016, p. 408).

The above considerations suggest that law does not truly embody its presumed characteristics of objectivity, universality and neutrality. Law is made by the people in power and reflects the existing patriarchal power structures (Hunter, 2013; Smart, 1989; Fredman, 1997). Fixed legal procedures and definitions make it difficult for law to fully encapsulate and address multifaceted and deeply rooted issues (Smart, 1989, p. 34). Through its "generalising" nature, anti-stereotyping norms can reinforce gender essentialism by acknowledging only the experiences of dominant groups of women (Hirschmann, 2013; Choudhry, 2016; Crenshaw, 1989). This allows scholars to question the transformative potential of anti-stereotyping laws. They can perpetuate the same discriminatory practices that they aim to eliminate. This paradox is explored in the following section of this chapter.

2.5 Failure to Be Transformative

Drawing on the previous section, which explored that law fails to be "objective", this section discusses how law might not only reflect but also reinforce the patriarchal gender order. It does so by exploring the disconnection between the perceived intent of lawmakers and the possible impact of anti-stereotyping laws. Therefore, this section argues that legal instruments aimed at improving women's situation can actually perpetuate discriminatory hierarchies.

Before commencing the discussion, it is crucial to remain vigilant that it is impossible to truly know the intent of lawmakers. It remains beyond the scope of academic research to compare the "true" intent with actual results of a legal norm. Therefore, references to "intent" are used figuratively. The aim of this section is to critically engage with the perceived intent or *ratio legis* of anti-stereotyping norms, namely the elimination of gender stereotyping, compared with the possibility that these provisions will simply perpetuate the existing patriarchal power structures. At the same time, it should be highlighted that this might not always be an "unintended" result. As discussed in the previous section, lawmaking is influenced by the existing social, political and economic power structures, and it is made by people in power (Fredman, 1997). Therefore, it is possible that the "actual" intent of the lawmakers is in fact to solidify gender stereotypes and patriarchal social order which secure their dominant position.

This argument is reflected in feminist critique of the "paternalistic" character of law (Otto, 2005). Even the human rights system tends to position women as victims or a "vulnerable group" who needs special help, not as active subjects who require rights. For instance, the laws aimed at elimination of violence against women can reinforce the patriarchal gender order, instead of dismantling it (Otto, 2005, p. 122). They can uphold the stereotypes sustaining "men's power over women" and women's position as victims (Clay-Warner & Edgemon, 2020, p. 42). This in turn reproduces hegemonic hierarchies and facilities male violence against women (Clay-Warner & Edgemon, 2020; Otto, 2005).

Recognising this benevolent paternalism of human rights is especially crucial when addressing the needs of non-dominant groups of women. As signalled in the previous section, the "allegedly universal" human rights system reproduces other forms of discrimination, including race, nationality and cultural background, which intersect with gender (Otto, 2005, p. 106). Lawmakers must avoid describing non-dominant groups of women as "abjectly oppressed by their cultures" (Peroni, 2016, p. 50), because this approach reinforces the stereotypical assumption of some cultures as unjust and "backward" (Gill & Walker, 2020).

This discussion of the patronising character of human rights shows that there are basically two kinds of legal norms with regards to gender stereotyping. Laws prohibiting stereotyping and those reinforcing it (Ben-Asher, 2016, p. 1190). That causes a clear clash within the law. Certain gender stereotypes are prohibited and considered discriminatory, while others are being given legitimacy through the law (Ben-Asher, 2016, p. 1190). For instance, it is "lawful to deny a female guard a position at an all-male prison but unlawful to refuse to hire a woman as a researcher for a physics clinic" (Ben-Asher, 2016, p. 1187).

This argument demonstrates that drafting truly transformative anti-stereotyping laws poses serious challenges. However, feminist legal scholars warn that even with the most carefully drafted legal reforms, it is impossible to predict their implications (Smart, 1989). Once a new law is in place its application, enforcement and interpretation "is in the hands of individuals and agencies far removed from the values and politics of the women's movement" (Smart, 1989, p. 164). This is especially true with regards to international law, including human rights. They are drafted on the international level; however, their implementation takes place on the national level. In the case of CEDAW, this means 189 countries which interpret and apply the Convention according to their social and political

systems and structures. While the document that includes a reporting procedure by the CEDAW Committee is more a monitoring tool than an enforcing mechanism (Hodson, 2014, p. 563). Therefore, the real-life application and interpretation of CEDAW remains in the hands of individual countries which might not share the same values or ideas about gender equality as the drafters. For instance, when joining CEDAW some states expressed reservations that they shall implement it as long as it does not go against their constitutions (e.g. Pakistan, Qatar and Monaco) or Sharia law (e.g. Malaysia, Oman and Morocco), without providing much detail as to what it actually entails (UN Treaty Collection, 2021).

These doubts lead to an argument well established in feminist scholarship that introducing a new law, policy or institution is not enough to bring about sustainable social transformation (Cook & Cusack, 2010; Timmer, 2011; Auchmuty, 2012; Hester & Lilley, 2014). Law cannot be considered a sufficient solution to gender inequality and discrimination. What is needed is a structural shift within power relations together with the elimination of social attitudes which allow (or sometimes even encourage) continuous violations of the human rights of women (Chinkin et al., 2005, pp. 25–28). Rosemary Auchmuty (2012) brings forward an example of marital laws. The author argues that they are not the most appropriate tools for securing women's interests, and she proposes "empowerment through education and opportunities" as more promising solutions (Auchmuty, 2012, p. 84). Smart (1989, pp. 164–165) argues that the feminist involvement with law should go beyond simple reform which by itself does not offer effective and sustainable solutions to problems. At the same time, the author does not encourage ignoring law altogether (Smart, 1989, p. 2). The role that law can play in eliminating gender stereotyping is discussed below.

2.6 No Name: No Problem

The previous sections explained that law is far from being universal and objective and should not be automatically seen as a "panacea" for gender inequality. Keeping these observations in mind, this chapter now discusses if and how law can still be useful to tackle gender stereotyping. As noticed by Smart (1989), law holds a special position within societies, as it has the power to declare the "truth" and sets itself above different views. Therefore, while it is crucial to remain critical of the law and understand that a simple law reform is not enough to bring forth sustainable change,

ignoring law is not advisable either (Smart, 1989, p. 2; Cook & Cusack, 2010).

Legal scholars working on stereotyping argue that a fundamental task law can fulfil is to "name" gender stereotyping (Cook & Cusack, 2010; Timmer, 2011; Brems & Timmer, 2016). Naming means publicly acknowledging gender stereotyping as a problem requiring action. Cook and Cusack (2010) notice that without naming it is impossible to address any issue. There is no problem without the name. As highlighted by Sara Ahmed (2015), naming sexism is a feminist obligation. Without publicly "naming" gender stereotyping, its harm remains unrecognised (Cook & Cusack, 2010, pp. 39–70). The special position that law holds in the society (as discussed in the previous sections) makes it particularly valuable in this context. Legal instruments can acknowledge gender stereotyping as a human rights concern and possible violation. Without legal measures, gender stereotyping is legitimised and given authority through the law (Cook & Cusack, 2010, pp. 39–41). Since naming allows for recognition of gender stereotyping as a problem, without naming it is impossible to design solutions.

Naming is just the beginning of the process of eradication of gender stereotyping (Cook & Cusack, 2010, p. 39). Acknowledging stereotypes as a problem does not equal a commitment to address it. It is an important first step; however, it must be accompanied by the will to actually eliminate gender stereotyping and the conviction that it can be done. Law is not a "panacea". Even feminist scholars who highlight the role of law in the elimination of gender stereotyping recognise the importance of other tools, like the media and education (Cook & Cusack, 2010, p. 39; de Silva de Alwis, 2011, p. 333). Leading human rights organisations also propose an array of solutions, for instance awareness raising, trainings for media professionals and teachers, gender mainstreaming or changes in textbooks (CEDAW; the Istanbul Convention; the Maputo Protocol; Convention of Belém do Pará; European Parliament Resolution (2012/2116(INI)); Recommendation CM/Rec(2019)1).

2.7 Concluding Remarks

Gender stereotypes are a serious obstacle to the full realisation of human rights (Cook & Cusack, 2010; Timmer, 2011; Fredman, 1997; Peroni & Timmer, 2016). There exists a rich variety of international human rights instruments obliging states parties to take action against gender

stereotyping. Leading human rights organisations, like the United Nations, the African Union, the Organisation of American States or the Council of Europe, have introduced legal and policy instruments aimed at elimination of gender stereotyping. These commitments suggest that the international community considers law to be an appropriate tool to address gender stereotyping. Similarly, legal scholarship notices the connection between gender stereotyping and human rights violations (Cook & Cusack, 2010; Peroni & Timmer, 2016). Yet, despite the legal commitments, gender stereotypes continue to shape and limit the lives of people across the globe (Fredman, 1997, pp. 1–3). Due to this paradox, this chapter engaged critically with using legal instruments to eradicate harmful gender stereotyping.

This chapter studied two "failures" with regards to using law to eliminate gender stereotyping. Firstly, it challenged the idea of law as "objective" and "neutral" and explored that law is shaped by the existing patriarchal hierarchies. This led to the second "failure" which focused on the limited transformative impact of legal instruments. The discussion revealed that "benevolent" laws can in fact reproduce existing power structures, including gender stereotypes. For instance, the position of women as victims who require special "help" and "protection", instead of realisation of rights (Otto, 2005).

Nevertheless, law does hold a special position in the society. It is considered to express universally accepted values, and, therefore, it should not be ignored when addressing gender stereotyping. Law has the power to publicly name gender stereotyping as a problem that requires addressing. Without legal recognition, the harm of gender stereotyping remains hidden (Cook & Cusack, 2010). And in turn, stereotyping becomes validated through law.

Nevertheless, as explained in this chapter, drafting anti-stereotyping laws remains a challenging task. "Naming" gender stereotypes in legal norms needs to be accompanied by addressing the roots of these harmful attitudes and proposing solutions. The most carefully drafted legal norms are not enough to bring about sustainable change. The deeply rooted and multifaceted character of gender stereotypes suggests that their eradication requires a coordinated effort of different sectors and institutions. Everyday individual behaviours should not be overlooked. Each day people can contribute to building a social climate where gender stereotyping is not tolerated.

It is crucial to recognise that this chapter is just a beginning of engaging with the complex topic of law and gender stereotyping. Certainly, it is an important debate to explore. The amount of legal and policy instruments aimed at the elimination of gender stereotyping, together with the continuous negative impact of stereotypes, suggests that there is significant scope for improvement. Without further research into the anti-stereotyping laws and policies, as well as into the link between gender stereotyping and human rights violations, it will be very difficult to better grasp this complex phenomenon. More importantly, it will be much more challenging to design effective tools for eliminating gender stereotyping and in turn bring forward gender equality and put an end to violations of human rights.

Notes

1. See, for example: Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women; the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence; A Union of Equality: Gender Equality Strategy 2020–2025 by the European Commission.
2. Also see, for example: General recommendations by the Committee on the Elimination of Discrimination against Women: No. 27, on older women and protection of their human rights; No. 28, on the core obligations of state parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; No. 35, on gender-based violence against women, updating general recommendation No. 19; No. 36, on the right of girls and women to education; No. 37, on gender-related dimensions of disaster risk reduction in the context of climate change.
3. See Endnote 1.
4. For example, the Declaration on the Elimination of Violence against Women and Violence against Children in ASEAN; the SAARC Social Charter.

References

Agius, S. (2015). *Human Rights and Intersex People. Issue Paper Published by the Council of Europe Commissioner for Human Rights.* Council of Europe.

Ahmed, S. (2015). Introduction: Sexism, the Problem with a Name. *New Formations, 86*, 5–13.

Auchmuty, R. (2012). Law and the Power of Feminism: How Marriage Lost Its Power to Oppress Women. *Feminist Legal Studies, 20*, 71–87.

Bates, L. (2012). *The Everyday Sexism Project*. Retrieved June 9, 2021, from https://everydaysexism.com/

Ben-asher, N. (2016). The Two Laws of Sex Stereotyping. *Boston College Law Review, 57*(4), 1187–1235.

Brems, E., & Timmer, A. (2016). Stereotyping as a Human Rights Issue: Crosscutting Themes. In E. Brems & A. Timmer (Eds.), *Stereotypes and Human Rights Law* (pp. 2–4). Intersentia.

Caracciolo di Torella, E., & Masselot, A. (2020). *Caring Responsibilities in European Law and Policy: Who Cares?* Routledge.

Chinkin, C., Wright, S., & Charlesworth, H. (2005). Feminist Approaches to International Law: Reflections from Another Century. In D. Buss & A. Manji (Eds.), *International Law Modern Feminist Approaches* (pp. 17–46). Hart Publishing.

Cho, S., Crenshaw, K., & McCall, L. (2013). Toward a Field of Intersectionality Studies: Theory, Applications and Praxis. *Signs: Journal of Women in Culture and Society, 38*(4), 785–810.

Choudhry, S. (2016). Towards a Transformative Conceptualisation of Violence Against Women – A Critical Frame Analysis of Council of Europe Discourse on Violence Against Women. *The Modern Law Review, 79*(3), 406–441.

Clay-Warner, J., & Edgemon, T. G. (2020). Feminist Approaches to Victimology. In S. Walklate et al. (Eds.), *The Emerald Handbook of Feminism, Criminology and Social Change* (pp. 35–50). Emerald Publishing Limited.

CoE. (2011). *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*.

Connell, R. (1993). *Masculinities*. Polity Press.

Cook, R. J., & Cusack, S. (2010). *Gender Stereotyping: Transnational Legal Perspectives*. University of Pennsylvania Press.

Cook, R., & Weiss, C. (2016). Gender Stereotyping in the Military. Insights from Court Cases. In E. Brems & A. Timmer (Eds.), *Stereotypes and Human Rights Law* (pp. 175–198). Intersentia.

Cook, R. J., Cusack, S., & Dickens, B. M. (2010). Unethical Female Stereotyping in Reproductive Health. *International Journal of Gynecology and Obstetrics, 109*, 255–258.

Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine. *Feminist Theory and Antiracist Politics, University of Chicago Legal Forum, 1989*(1), 139–167.

CSW. (2010). *Commemorating 30 Years of the Convention on the Elimination of All Forms of Discrimination Against Women: Moderator's Summary*. UN Doc. E/CN.6/2010/CRP.12.

Cusack, S. (2013a). *Gender Stereotyping as a Human Rights Violation*.

Cusack, S. (2013b). The CEDAW as a Legal Framework for Transnational Discourses on Gender Stereotyping. In A. Hellum & H. Sinding Aasen (Eds.),

Women's Human Rights: CEDAW in International, Regional and National Law (pp. 124–157). Cambridge University Press.

Cusack, S. (2016). Building Momentum Towards Change. How the UN's Response to Stereotyping Is Evolving. In E. Brems & A. Timmer (Eds.), *Stereotypes and Human Rights Law* (pp. 11–38). Intersentia.

de Silva de Alwis, R. (2011). Examining Gender Stereotypes in New Work/Family Reconciliation Policies: The Creation of a New Paradigm for Egalitarian Legislation. *Duke Journal of Gender Law and Policy, 18*, 205–334.

Fredman, S. (1997). *Women and the Law*. Clarendon Press.

Fredman, S. (2016). *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*. European Commission.

Gill, A. K., & Walker, S. (2020). On Honour, Culture and Violence Against Women in Black and Minority Ethnic Communities. In S. Walklate et al. (Eds.), *The Emerald Handbook of Feminism, Criminology and Social Change* (pp. 157–176). Emerald Publishing Limited.

Guerrina, R., & Zalewski, M. (2007). Negotiating Difference/Negotiating Rights: The Challenges and Opportunities of Women's Human Rights. Forum Introduction. *Review of International Studies, 33*, 5–10.

Hester, M., & Lilley, S. J. (2014). *Preventing Violence Against Women: Article 12 of the Istanbul Convention. A Collection of Papers on the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*. Council of Europe.

Hirschmann, N. J. (2013). Freedom, Power and Agency in Feminist Legal Theory. In M. Davies & V. E. Munro (Eds.), *The Ashgate Research Companion to Feminist Legal Theory* (pp. 51–64). Ashgate Publishing Company.

Hodson, L. (2014). Women's Rights and the Periphery: CEDAW's Optional Protocol. *European Journal of International Law, 25*(2), 561–578.

Holtmaat, R., & Naber, J. (2011). *Women's Human Rights and Culture from Deadlock to Dialogue*. Intersentia.

Hunter, R. (2013). Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism. In M. Davies & V. E. Munro (Eds.), *The Ashgate Research Companion to Feminist Legal Theory* (pp. 13–30). Ashgate.

Kimelblatt, M. (2016). Reducing Harmful Effects of Machismo Culture on Latin American Domestic Violence Laws: Amending the Convention of Belém do Pará to Resemble the Istanbul Convention. *The George Washington International Law Review, 49*(1), 405–439.

Mcgee Crotty, P. (1996). Legislating Equality. *International Journal of Law, Policy and the Family, 10*, 317–333.

Otto, D. (2005). Disconcerting 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law. In D. Buss & A. Manji (Eds.), *International Law Modern Feminist Approaches* (pp. 105–130). Hart Publishing.

Peroni, L. (2016). Violence Against Migrant Women: The Istanbul Convention Through a Postcolonial Feminist Lens. *Feminist Legal Studies, 24*, 49–67.

Peroni, L., & Timmer, A. (2016). Gender Stereotyping in Domestic Violence Cases. An Analysis of the European Court of Human Rights Jurisprudence. In E. Brems & A. Timmer (Eds.), *Stereotypes and Human Rights Law* (pp. 39–65). Intersentia.

Šimonović, D. (2014). Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions. *Human Rights Quarterly, 36*, 590–606.

Smart, C. (1989). *Feminism and the Power of Law*. Routledge.

Timmer, A. (2011). Toward an Anti-Stereotyping Approach for the European Court of Human Rights. *Human Rights Law Review*, 707–738.

Timmer, A. (2015). Judging Stereotypes: What the European Court of Human Rights Can Borrow from American and Canadian Equal Protection Law. *The American Journal of Comparative Law, 63*(1), 239–284.

UN Treaty Collection. (2021). *Status of the Convention on the Elimination of All Forms of Discrimination Against Women*. Retrieved April 30, 2021, from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4

Zwingel, S. (2016). *Translating International Women's Rights: The CEDAW Convention in Context*. Springer.